

EDMUND G. BROWN JR.  
 Attorney General of the State of California  
 DAVID S. CHANEY  
 Chief Assistant Attorney General  
 ROCHELLE C. EAST - 183792  
 Senior Assistant Attorney General  
 JONATHAN L. WOLFF - 193479  
 Supervising Deputy Attorney General  
 LISA A. TILLMAN - 126424  
 Deputy Attorney General  
 KYLE A. LEWIS - 201041  
 Deputy Attorney General  
 455 Golden Gate Avenue, Suite 11000  
 San Francisco, CA 94102-7004  
 Telephone: (415) 703-5677  
 Facsimile: (415) 703-5843  
 kyle.lewis@doj.ca.gov

HANSON BRIDGETT LLP  
 JERROLD C. SCHAEFER - 39374  
 PAUL B. MELLO - 179755  
 S. ANNE JOHNSON - 197415  
 SAMANTHA TAMA - 240280  
 RENJU P. JACOB - 242388  
 425 Market Street, 26th Floor  
 San Francisco, CA 94105  
 Telephone: (415) 777-3200  
 Facsimile: (415) 541-9366  
 jschaefer@hansonbridgett.com  
 pmello@hansonbridgett.com  
 stama@hansonbridgett.com  
 rjacob@hansonbridgett.com

Attorneys for Defendants

**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**AND THE EASTERN DISTRICT OF CALIFORNIA**  
**UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES**  
**PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE**

RALPH COLEMAN, et al.,

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

No. 2:90-cv-00520 LKK JFM P

**THREE-JUDGE COURT**

MARCIANO PLATA, et al.,

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, et al.,

Defendants

No. C01-1351 TEH

**THREE-JUDGE COURT**

**DECLARATION OF SAMANTHA TAMA IN  
 SUPPORT OF DEFENDANTS' OPPOSITION  
 TO PLAINTIFFS' MOTION TO COMPEL THE  
 PRIVILEGED DEPOSITION TESTIMONY OF  
 MATTHEW CATE**

**To: Magistrate Judge Moulds**

1 I, Samantha Tama, declare as follows:

2 1. I am an associate in the law offices of Hanson Bridgett LLP, counsel of  
3 record for Defendants in the *Plata v. Schwarzenegger* Three-Judge Panel matter. I  
4 submit this declaration in support of Defendants' opposition to Plaintiffs' motion to  
5 compel the privileged deposition testimony of Matthew Cate. I have personal knowledge  
6 of the matters stated in this declaration, and can competently testify to these matters if  
7 called upon to do so.

8 2. On Wednesday, September 3, 2008, at 4:39 p.m., I received a voicemail  
9 from Rebekah Evenson at the Prison Law Office, counsel for Plaintiffs. Ms. Evenson  
10 sought to establish a briefing schedule regarding Plaintiffs' anticipated motion to compel  
11 the privileged deposition testimony of Matthew Cate regarding his and other government  
12 decision-makers' mental processes. I returned Ms. Evenson's call on the morning of  
13 Thursday, September 4, 2008. We reached a tentative agreement to submit joint  
14 briefing to the Court by Friday, September 12, 2008.

15 3. Ms. Evenson and I then called Haven Gracey, clerk to Magistrate Judge  
16 Moulds, to set up a hearing date on Plaintiffs' motion. Ms. Evenson relayed the parties'  
17 proposed briefing schedule, and requested a hearing date of either September 15, 16, or  
18 17, 2008. Ms. Gracey informed the parties that she would inform Magistrate Judge  
19 Moulds of the parties' request for an early hearing, and would get back to the parties  
20 with a hearing date. Ms. Gracey then called Ms. Evenson and myself later that day, on  
21 the afternoon of September 4, 2008, to say that Magistrate Judge Moulds would like to  
22 have a hearing on Plaintiffs' motion the next day, September 5, 2008, at 1:30 p.m. I  
23 stated that I would have to confer with others in my office, but that preliminarily, I could  
24 not agree to it because all of Defendants' attorneys had a previous obligation to attend a  
25 meeting. I also stated that such a shortened hearing date was unnecessary given that  
26 the parties had already stipulated to a joint briefing schedule and because Defendants  
27 had stipulated that the close of discovery would not impact Defendant Cate's deposition  
28 testimony. After conferring with other attorneys in my office, I called Ms. Gracey and Ms.

1 Evenson to confirm that Defendants would be unable to attend a hearing on September  
2 5, 2008. I also requested that the parties be permitted the opportunity to submit briefing,  
3 given the significance of the issue. In a subsequent telephone conversation that same  
4 afternoon, Ms. Gracey informed Ms. Evenson and myself that the hearing would be held  
5 on Monday morning, September 8, 2008, and that if the parties wished, we could submit  
6 briefing the next day, September 5, 2008.

7 4. Attached as Exhibit A to this declaration is a true and correct copy of  
8 relevant portions of the rough transcript of the deposition of Secretary of the California  
9 Department of Corrections and Rehabilitation, Matthew Cate, held on Friday, August 29,  
10 2008.

11  
12 I declare under penalty of perjury that the foregoing is true and correct. Executed  
13 in San Francisco, California, on September 5, 2008.

14  
15  
16 

17 Samantha Tama  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

RoughCate082908.txt

1 UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF CALIFORNIA  
3 AND THE NORTHERN DISTRICT OF CALIFORNIA

4 ---oOo---

5 RALPH COLEMAN, et al.,  
6 Plaintiffs,  
7 vs.

No. 2:90-cv-00520  
LKK JFM P

8 ARNOLD SCHWARZENEGGER, et  
9 al.,  
10 Defendants.

11 MARCIANO PLATA, et al.,  
12 Plaintiffs,  
13 vs.

No. C:01 1351 TEH

14 ARNOLD SCHWARZENEGGER, et  
15 al.,  
16 Defendants.

17  
18 UNCERTIFIED ROUGH DRAFT TRANSCRIPT  
19 DEPOSITION OF  
20 MATTHEW L. CATE

21  
22 FRIDAY, AUGUST 29, 2008

23  
24 REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR  
25 (1-412303)

1

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

1 YOU HAVE REQUESTED AN UNEDITED, NONCERTIFIED ROUGH  
2 DRAFT TRANSCRIPT. THE ROUGH DRAFT TRANSCRIPT HAS  
Page 1

RoughCate082908.txt

3 BEEN REQUESTED IN THE FORMAT OF A ROUGH DRAFT, ASCII  
4 DISK AND/OR INSTANTANEOUS TRANSMISSION.  
5 THIS CERTIFIED SHORTHAND REPORTER MAKES NO  
6 REPRESENTATIONS REGARDING THE ACCURACY AND  
7 COMPLETENESS OF SAID REAL-TIME TRANSCRIPT/ROUGH  
8 DRAFT. THERE MAY BE MISTRANSLATED OR UNTRANSLATED  
9 TEXT, INCLUDING BUT NOT LIMITED TO  
10 OCCURRENCES WITHIN QUESTIONS BY COUNSEL,  
11 ANSWERS GIVEN BY THE WITNESS, COLLOQUY AND  
12 GRAMMATICAL INACCURACIES. THESE  
13 WILL BE CORRECTED ON THE FINAL  
14 CERTIFIED TRANSCRIPT. THE ABOVE-LISTED LIMITATIONS  
15 MAY BE DUE TO THE REAL-TIME SOFTWARE PROGRAM AND/OR  
16 TIME CONSTRAINTS PLACED ON THIS REPORTER IN  
17 PROVIDING THIS UNEDITED, NONCERTIFIED REAL-TIME  
18 TRANSCRIPT/ROUGH DRAFT.  
19 THIS REAL-TIME COMPUTERIZED TRANSCRIPT/ROUGH DRAFT  
20 IS A SERVICE FOR YOUR REVIEW OF THE  
21 PROCEEDINGS AND IS NOT PROVIDED FOR, NOR MEANT TO BE  
22 USED OR CITED IN ANY TYPE OF COURT PROCEEDINGS. IT  
23 SHALL NOT BE USED BY THE WITNESS TO CORRECT AND  
24 SIGN. ONLY THE FINAL, CERTIFIED TRANSCRIPT SHALL BE  
25 USED FOR PURPOSES OF READING AND SIGNING BY THE

DO NOT CITE PER CCP2025(b)

2

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

1 WITNESS. THE COMPLETED CERTIFIED  
2 TRANSCRIPT AND CERTIFIED COPIES SHALL BE DELIVERED  
3 IN APPROXIMATELY ONE TO TWO WEEKS,  
4 UNLESS ALTERNATE ARRANGEMENTS ARE MADE.  
5 REALTIME AND/OR ROUGH DRAFT TRANSCRIPTS WILL NOT BE

RoughCate082908.txt

6 PROVIDED UNLESS A FINAL, CERTIFIED COPY OF THE  
7 TRANSCRIPT IS ORDERED.

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

DO NOT CITE PER CCP2025(b)

3

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

1 --o0o--

2 Deposition of MATTHEW L. CATE, taken by the  
3 Plaintiffs, at PRISON LAW OFFICE, 1917 Fifth Street,  
4 Berkeley, California 94710, commencing at 9:30 a.m.,  
5 on FRIDAY, AUGUST 29, 2008, before me, HOLLY THUMAN,  
6 CSR, RMR, CRR.

7 --o0o--

8 APPEARANCES

9 FOR THE PLAINTIFFS:

RoughCate082908.txt

10 PRISON LAW OFFICE  
11 1917 Fifth Street  
12 Berkeley, California 94710  
13 By: DONALD SPECTER, Attorney at Law

14 FOR DEFENDANTS:

15 HANSON BRIDGETT LLP  
16 425 Market Street, 26th Floor  
17 San Francisco, California 94105  
18 By: PAUL MELLO, Attorney at Law

19 STATE OF CALIFORNIA  
20 DEPARTMENT OF CORRECTIONS & REHABILITATION  
21 Office of Legal Affairs  
22 1515 S Street, Suite 502  
23 By: BENJAMIN T. RICE, Assistant Secretary

24 FOR DISTRICT ATTORNEY INTERVENORS:

25 DISTRICT ATTORNEY, COUNTY OF RIVERSIDE  
82-675 Highway 111, Fourth Floor  
Indio, California 92201  
By: WILLIAM E. MITCHELL, Assistant District  
Attorney

DO NOT CITE PER CCP2025(b)

4

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

1 ALSO PRESENT: PATRICK MURRAY, Videographer.  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

RoughCate082908.txt

13 MR. SPECTER: Q. You mentioned that you  
14 discussed healthcare with Mr. Dunmoyer. Have you --  
15 well, let me ask you what I hope is a simpler  
16 question.

17 Have you -- of the subjects that you --  
18 I'll strike that question.

19 You mentioned that you discussed healthcare  
20 issues with Mr. Dunmoyer. Would that include  
21 medical and mental healthcare?

22 A. Yes.

23 Q. And what were the -- what did you talk  
24 about about that with Mr. Dunmoyer?

25 MR. MELLO: Now I'm going to instruct the  
DO NOT CITE PER CCP2025(b)

23

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

1 witness not to answer on the basis the executive and  
2 deliberative process privilege.

3 MR. SPECTER: Okay. Are you going to  
4 instruct him not to answer on all the -- on all  
5 conversations he had with Mr. Dunmoyer about any of  
6 the topics that he mentioned?

7 MR. MELLO: Any of the deliberative topics  
8 that you have just mentioned, yes.

9 MR. SPECTER: And all follow-up questions  
10 relating to that?

11 MR. MELLO: Yes.

12 MR. SPECTER: So I don't have to ask him a  
13 hundred questions here?

14 MR. MELLO: Right.

15 MR. SPECTER: Okay.

16 MR. MELLO: If you could explain to me how  
Page 21



RoughCate082908.txt

17 it's relevant to the issues in this case as to why  
18 crowds is the primary cause of the unconstitutional  
19 delivery of healthcare and why the only fix is a  
20 prisoner release order, and why -- how it relates to  
21 whether there will be an adverse impact on public  
22 safety, how those discussions, which are protected  
23 by the executive privilege, are relevant, I'm  
24 willing to rethink the issue.

25 But I just don't know how -- why we would

DO NOT CITE PER CCP2025(b)

24

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

1 waste the time talking about those discussions when  
2 I'm sure there are topics he can answer your  
3 questions about and you can get the information you  
4 need with respect to the actual issues before  
5 this -- before this three-judge panel.

6 MR. SPECTER: Well, I don't understand you  
7 to be making a relevance objection, Paul. I mean --

8 MR. MELLO: I'm literally just trying to  
9 move the ball forward here. The last thing I want  
10 to do is instruct my witness not to answer all day  
11 long.

12 But what I think I'm going to get, because  
13 what I think you're going at is, discussions that  
14 are clearly protected. I -- I think a real court  
15 would clearly protect the communications with the  
16 governor's chief of staff and the governor's cabinet  
17 secretary, those deliberative communications I think  
18 a real court would protect those, and therefore I'm  
19 going to instruct the witness not to answer those

RoughCate082908.txt

20 questions.

21 But as to moving the ball forward and  
22 trying to get the discovery that you within the, I  
23 think that there's other ways you can do it. Gist  
24 don't -- I mean, probably I just don't understand  
25 why those discussions matter. Isn't what matters

DO NOT CITE PER CCP2025(b)

25

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

1 what actually happens, what they have done, what  
2 they haven't done?

3 MR. SPECTER: Well, what -- the things you  
4 talk about matter, too. But -- and I know I can ask  
5 Mr. Cate questions about some of these issues which  
6 don't real to what was discussed.

7 But I believe I'm also entitled, since  
8 Mr. Dunmoyer is Mr. Cate's boss, to know what was  
9 said during those meetings bay Mr. Dunmoyer and  
10 Mr. Cate, and I can't do that if you're going to  
11 instruct him not to answer.

12 MR. MELLO: Understood. So we're probably  
13 at an impasse, is what you're saying.

14 MR. SPECTER: That's right.

15 MR. MELLO: Okay.

16 MR. SPECTER: Q. So we will take this up  
17 with the Court --

18 MR. MELLO: I'm sure we will.

19 MR. SPECTER: And see what they say.

20 And would all of the -- I was going to ask  
21 him whether he's had any discussions with Mr. --  
22 well, with Ms. Kennedy about any of these subjects.

23 MR. MELLO: And he'll get the same --

RoughCate082908.txt

24 whether he's had those discussions?

25 MR. SPECTER: Uh-huh.

DO NOT CITE PER CCP2025(b)

26

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

1 MR. MELLO: I think I'd allow him to answer  
2 the foundation question. With -- I'll make the  
3 objection, but he can answer whether he's had  
4 discussions on these topics if you'd like.

5 MR. SPECTER: That would be helpful.

6 MR. MELLO: Okay.

7 MR. SPECTER: Q. Mr. Cate, I have a list  
8 of the things you mentioned, so why don't you just  
9 say yes or no as to whether you've discussed them  
10 with Ms. Kennedy.

11 A. All right.

12 Q. And then I will ask you if there's anything  
13 else after we get done with this.

14 A. Okay.

15 Q. Plans for your first hundred days?

16 A. In part.

17 Q. Okay. The integrative strategy on  
18 overcrowding?

19 A. Again, not directly. To the extent it  
20 covers construction -- component parts of it, yes.

21 Q. Okay. Parole reform?

22 A. Yes.

23 Q. Budget?

24 A. Yes.

25 Q. Vision, mission, goals of the department?

DO NOT CITE PER CCP2025(b)

27

RoughCate082908.txt

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

1 A. In part.

2 Q. Okay. Medical and mental healthcare?

3 A. Yes.

4 Q. The three-judge panel proceedings?

5 A. Yes.

6 Q. The legislative proposals that we just  
7 referred to?

8 A. Same answer as with Mr. Dunmoyer.

9 Q. Okay.

10 A. In part.

11 MR. SPECTER: And Paul, as I understand it,  
12 you would instruct him not to answer based on the --  
13 well, why don't you make your objection.

14 MR. MELLO: Based on the deliberative  
15 process and executive privileges, as well as, if any  
16 of those discussions occurred in the presence of  
17 counsel, the attorney-client privilege.

18 MR. SPECTER: Q. Did any of the  
19 discussions you had with Ms. Kennedy occur within --  
20 with a lawyer present other than yourself?

21 A. Yes.

22 Q. And who is the lawyer?

23 MR. MELLO: Or lawyers?

24 MR. SPECTER: Q. Or lawyers?

25 A. Some of them occurred with Andrea Hoch, the

DO NOT CITE PER CCP2025(b)

28

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

1 governor's legal affairs secretary, present. And

2 I'm not sure whether Mr. Rice or any other lawyer  
Page 25

RoughCate082908.txt

3 might have been present. I don't believe so,  
4 though.

5 Q. Okay. During the time that Ms. Hoch was  
6 present, would she participate in these discussions?

7 A. Yes.

8 Q. And was the nature of her participation to  
9 provide legal advice?

10 A. Primarily. I'd say yes, she --

11 MR. MELLO: You've answered.

12 MR. SPECTER: Q. But you can't cut him  
13 off, Paul.

14 MR. MELLO: I just did. Maybe I shouldn't,  
15 but I just did. Okay.

16 MR. SPECTER: Just let him answer the  
17 question.

18 THE WITNESS: If she -- the only caveat is,  
19 she may have commented on her own opinion on a  
20 policy during a discussion. They're informal. But  
21 primarily, she provides counsel.

22 MR. SPECTER: Q. So but you discussed  
23 other matters beside -- you had discussions on  
24 policy issues with Ms. Kennedy. Correct?

25 A. Yes.

DO NOT CITE PER CCP2025(b)

29

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

1 Q. And while you were discussing those  
2 policies issues between you and Ms. Kennedy, there  
3 were times when Ms. Hoch wasn't providing legal  
4 advice. Is that correct?

5 MR. MELLO: I think that misstates his

RoughCate082908.txt

6 testimony. And I think we're getting dangerously  
7 close to reveal the substance of the communications.  
8 And I don't think you want to do that. Right?

9 MR. SPECTER: Well, I just -- I didn't ask  
10 him about substance. I just asked him if --

11 MR. MELLO: If you understand the question,  
12 and you can provide an answer that doesn't go to the  
13 substance of the communication, feel free to answer  
14 it. Otherwise, I will instruct you not to answer.

15 THE WITNESS: My understanding is that  
16 she's there primarily to provide legal advice.  
17 There were policy discussions that took place in her  
18 presence. I couldn't say at what moment she was --  
19 I assume she's always acting in her capacity as the  
20 governor's lawyer. That's her job. And so I would  
21 have to guess as to whether she was at any one  
22 moment herself acting -- trying to act in that  
23 capacity or not.

24 MR. SPECTER: Q. Right. And what I was  
25 getting at, in a meeting with three or four people,

DO NOT CITE PER CCP2025(b)

30

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

1 often people talk to each other, and some -- on --  
2 the third person is sometimes silent and not  
3 providing legal advice.

4 well, let me ask you this other question:  
5 were the nature of these discussions having  
6 to do with legal strategies for the defense of the  
7 current cases?

8 MR. MELLO: Without going into the  
9 substance, if you can answer that question.

RoughCate082908.txt

10 otherwise, I'll instruct you not to answer.

11 THE WITNESS: Sometimes.

12 MR. SPECTER: Q. Sometimes. Sometimes

13 not?

14 A. Right.

15 Q. Okay. So have you -- when was the last  
16 time you met with the governor? Or let me strike  
17 that and rephrase it.

18 When was the last time you spoke to the  
19 governor?

20 A. It seems like it would be 3 weeks ago.

21 Q. Okay. And what was the subject of that  
22 conversation?

23 MR. MELLO: Objection. Oh, the subject.

24 MR. SPECTER: Yes.

25 MR. MELLO: You can tell him the subject.

DO NOT CITE PER CCP2025(b)

31

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

1 THE WITNESS: The difficulty is, is that if  
2 seeing him and talked with him informally, you know,  
3 every week or every other week, and sometimes it's a  
4 substantive conversation that relates to my subject  
5 area of expertise -- or not expertise, but  
6 corrections, you know, where I'm reporting to him on  
7 an issue related to corrections, and sometimes it's  
8 in a bigger format of correctional -- of government  
9 officials.

10 I think the last time I talked to him was  
11 at the Border Governors' Conference.

12 MR. SPECTER: Q. When was the last time

RoughCate082908.txt

13 you talked to him about issues concerning your job  
14 responsibilities, or anything falling within --  
15 under the department?

16 A. I think we spoke briefly about this at the  
17 border governors' concerns, which would have been  
18 about 2 weeks ago.

19 Q. And by this, you mean --

20 A. I mean the Department of Corrections.

21 Q. I see.

22 A. But it would have been a 2- or 3-minute  
23 conversation.

24 Q. I see. Did you -- of all the things that  
25 we listed before, the plans for the first hundred

DO NOT CITE PER CCP2025(b)

32

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

1 days, have you had a discussion with him about that?

2 A. In part.

3 Q. Okay. The integrated strategy for -- about  
4 crowding?

5 A. In part.

6 Q. Parole reform?

7 A. Yes.

8 Q. The budget?

9 A. Yes.

10 Q. Your vision, mission, goals of the  
11 department?

12 A. Again, the highlights, yes.

13 Q. Yes. Healthcare, medical and mental  
14 healthcare?

15 A. Yes.

16 Q. The three-judge panel proceeding?



RoughCate082908.txt

17 A. I believe so, yes.

18 Q. And the legislative proposals we've  
19 discussed earlier?

20 A. I don't believe so.

21 Q. Okay.

22 MR. SPECTER: Do you --

23 MR. MELLO: Same objection if you go into  
24 the substance.

25 MR. SPECTER: So we have an agreement

DO NOT CITE PER CCP2025(b)

33

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

1 that --

2 MR. MELLO: That --

3 MR. SPECTER: You're going to --

4 MR. MELLO: We've a disagreement.

5 MR. SPECTER: We have an agreement that  
6 you're going to invoice the deliberative process  
7 privilege --

8 MR. MELLO: For his substantive  
9 conversations with the governor, yes.

10 Done, I assume you're also not asking -- I  
11 mean, it seems to me that some of these meetings may  
12 relate to settlement discussions in this case, and I  
13 assume those are off limits. Right? You're not  
14 asking him to testify about any of those things, are  
15 you?

16 MR. SPECTER: Well, he hasn't even -- we  
17 haven't even established that he has had a  
18 discussion with the judge about settlement. So I  
19 don't know.

RoughCate082908.txt

20 MR. MELLO: The judge?

21 MR. SPECTER: I mean, I'm sorry, the  
22 governor or any of these other people.

23 MR. MELLO: Okay, that's fine.

24 MR. SPECTER: You know, why don't we do  
25 that so we can sort of -- I mean, if they're within

DO NOT CITE PER CCP2025(b)

34

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

1 the settlement privilege --

2 MR. MELLO: You're in the asking him to  
3 speak about any discussions that he had with the  
4 governor's office -- those three individuals we've  
5 identified regarding settlement discussions.  
6 Correct?

7 MR. SPECTER: Well, I have to look at the  
8 rule. But anything which comes within the rule, I'm  
9 not asking him about, right. I don't have the rule  
10 in front of me.

11 Q. Do you know the rule by heart?

12 A. No.

13 Q. Let me just ask you, of the areas we  
14 mentioned in terms of the governor, have you had  
15 discussions with him apart from the settlement  
16 negotiations that were occurring in the spring of  
17 this year?

18 A. I'm not sure I understand.

19 MR. MELLO: Yeah, objection. Vague.

20 MR. SPECTER: Q. You were part of  
21 settlement negotiations in this case --

22 A. Right.

23 Q. -- from the time even before you became

RoughCate082908.txt

24 secretary until the end of June. Correct?

25 A. Correct.

DO NOT CITE PER CCP2025(b)

35

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

1 Q. During that time period, did you have  
2 discussions with the governor about the settlement  
3 of this -- the potential for settling this case or  
4 anything surrounding that?

5 A. Yes.

6 Q. Okay. Did you have discussions with the  
7 governor on the subjects that we just mentioned  
8 which weren't involved in the settlement process?

9 A. It's a difficult question only in this  
10 respect, in that the settlement process involved --  
11 it was so broad, the topics were so broad, I could  
12 have conversations that related to a specific area,  
13 that of course are connected to a potential  
14 resolution of this matter.

15 But not in the context -- not in the direct  
16 context at that moment of particular settlement  
17 offer.

18 Does that make sense?

19 Q. Yes, perfect sense?

20 MR. MELLO: So I think what he's saying is  
21 every discussion he had with these three people was  
22 part of the settlement process.

23 MR. SPECTER: You're free to characterize  
24 it that way. But we'll respectfully disagree.

25 MR. MELLO: That's what I heard.

DO NOT CITE PER CCP2025(b)

36

RoughCate082908.txt

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

1 MR. SPECTER: Huh?

2 MR. MELLO: That's what I heard.

3 MR. SPECTER: I know. You're free to make  
4 your argument.

5 Q. And the same -- does the same hold true for  
6 Susan Kennedy?

7 A. I think my answers would be slightly  
8 different.

9 Q. And how so? Why don't you give your answer  
10 then.

11 A. Can you go over your list?

12 Q. Yes. Plans for your first hundred days?

13 A. In less detail than with Mr. Dunmoyer and  
14 probably in somewhat more detail than with the  
15 governor.

16 Q. Okay. That seems appropriate.

17 The integrative strategy to discuss  
18 overcrowding?

19 MR. MELLO: Is the question whether he  
20 discussed those in -- as part of settlement  
21 discussions?

22 MR. SPECTER: Well, I think --

23 MR. MELLO: With those focus?

24 MR. SPECTER: Did I ask -- can we go off  
25 the record for a second?

DO NOT CITE PER CCP2025(b)

37

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

1 THE VIDEO OPERATOR: Going off the record,  
2 the time is 10:11.